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Issue Brief—The Doha WTO Ministerial

SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES

The "development" dimension of the multilateral trade system is embodied in the concept of "special and differential treatment" (S&D). The concept was conceived to acknowledge that developing countries, especially when compared with developed countries, are at different stages of economic, financial, human resource, and technological development, and therefore do not have the capacity to undertake the same level of multilateral commitments. There are more than 100 S&D provisions embedded in the WTO agreements. Developing countries, now representing more than 110 of the current 142 WTO members, believe that those provisions generally have not resulted in any tangible improvements in their economic development or contributed even marginally to their effective integration in world trade. As WTO members prepare to meet for the fourth WTO Ministerial Conference in Doha in November, developing country members insist that any future negotiations make S&D provisions more specific and legally enforceable.

Special and differential treatment can be classified in the following categories:

- Provisions aimed at increasing trade opportunities for developing and least-developed countries.
- Flexibility in implementing certain rules and commitments.
- Technical assistance.

Increasing Trade Opportunities

This category includes

- Unilateral (non-reciprocal) measures taken by developed countries to allow imports from developing and least-developed countries on a preferential basis;
- Priority in trade negotiations to reductions of tariffs on products of interest to developing and least-developed countries; and
- Extension of S&D treatment to developing and least developed countries in the application of quota restrictions, import licensing procedures, and trade remedy (or contingency protection) measures, such as safeguard actions, and anti-dumping and countervailing duty measures.

Unilateral Measures by Developed Countries

The principal example of such a measure is the Generalized System of Preferences (GSP)[1]. GSP, as applied by the United States, the European Union, and Japan, allows industrial and selected agricultural imports originating in developing and least-developed countries to enter these developed country markets on a duty-free or preferential duty basis. It further allows "special treatment," either in the application of tariff or non-tariff measures, for

[1] GSP is provided for in the 1979 Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries, otherwise known as the General Enabling Clause.

imports originating in least-developed countries beyond that accorded products originating in wealthier developing countries.

In addition to GSP, other agreements exist that offer preferential access to imports from developing country markets. These include

- The Lomé Convention (now Cotonou Partnership Agreement) between the EU and African-Caribbean-Pacific (ACP) countries,
- The Everything But Arms Initiative (EBA) between the EU and least developed countries, and
- The African Growth and Opportunity Act between the United States and sub-Saharan African countries.

However, as such agreements do not have a legal basis under WTO law (unlike GSP), parties to such arrangements are required to seek a waiver from the WTO.

Giving Priority in Trade Negotiations to Products of Developing Countries

The General Agreement on Tariffs and Trade (GATT 1994), which governs trade in goods, instructs developed countries to give high priority to the elimination of tariffs on a Most-Favored Nation basis (i.e., accorded to all countries) on products of interest to developing and least-developed countries, and to the removal of non-tariff measures affecting trade in such products. It also encourages developing countries to give priority in the negotiations to products of interest to other developing countries.

The General Agreement on Trade in Services (GATS), which governs trade in services, instructs developed countries to give priority in trade negotiations to liberalizing sectors and modes of supply of interest to developing countries.

Extension of Other S&D Measures

Other S&D measures in favor of developing countries are those pertaining to

- Quantitative restrictions,
- Import licensing procedures, and
- Trade remedy or contingency protection measures.

The Uruguay Round of negotiations sought the removal of all quantitative restrictions in trade. But a few remain, including quantitative restrictions associated with balance-of-payment difficulties and those pertaining to the Agreement on Textiles and Clothing (ATC). In both cases developing countries have access to S&D treatment.

In textiles trade, for example, the ATC provides for the removal of all quantitative restrictions by January 1, 2005, and stipulates that a mandatory growth rate in bilateral quotas should be applied to existing growth rates on products still subject to restrictions. The ATC rules provide for more favorable treatment of small and least-developed country suppliers in regard to base quota levels, and growth rates and flexibility requirements.

In the case where a country has to resort to trade restrictions because of balance-of-payment difficulties, the WTO allows developing countries to take measures when its monetary reserves are "inadequate" or when there is a threat of serious decline. Developed countries face more stringent criteria—they must demonstrate that the threat to the balance-of-payments is "imminent" or that monetary reserves are "very low."

As for import licensing, WTO rules state that special consideration should be given in the distribution of licenses to imports from developing and least-developed countries. The agreement also provides that developing countries would not be expected to incur additional administrative burden in order to provide import statistics for products subject to non-automatic licenses.

Finally, WTO rules allow countries to take certain measures, such as safeguards, anti-dumping or countervailing duties to protect domestic industries from serious or material injury.

To minimize the potentially serious disruptions that the imposition of such measures could have on developing countries, the WTO Safeguards Agreement provides that imports from a developing

country should be exempt from safeguard measures if the developing country's share in the imports of the product concerned in the country taking the measure is less than three percent.[2]

In the case of subsidies, an S&D provision requires that authorities terminate investigations where a product originated from a developing country and where the amount of subsidy is less than one percent, or the volume of subsidized imports or injury to domestic industry is negligible.

Flexibility in Implementing Certain Rules and Commitments

This includes

- Provisions that allow flexibility in accepting binding commitments in trade negotiations;
- Flexibility in providing temporarily increased protection to stimulate the development of "infant" industries;
- Longer transition periods for implementing some agreements; and
- Exemption of developing countries from certain specified obligations.

Flexibility in Accepting Binding Commitments

The GATT 1994 provides that developing countries should not be required to make contributions in trade negotiations that are inconsistent with their trade, development, and financial needs. To the extent they reduced them at all, developing countries cut their industrial and agricultural tariffs at rates lower that those applied by developed countries. In fact, developing and least-developed countries were able to bind their tariffs at rates higher than their applied rates (so-called "ceiling bindings").

The GATS, too, offers developing countries flexibility in opening fewer sectors, liberalizing fewer types of transactions, and progressively extending market access in line with economic development. It further gives developing countries the flexibility to attach conditions when providing market access to foreign suppliers, a measure designed to encourage, rather than discourage, their liberalization of services markets.

Flexibility in Protecting "Infant" Industries

Though it lays down strict criteria for invoking this provision, the GATT 1994 does allow developing countries to take restrictive measures—such as raising tariffs beyond bound rates or imposing quotas—to promote the development of new or expanding industries. However, the rules stipulate that measures may only be introduced after approval by WTO member countries and after conducting consultations with members affected by these measures.

Longer Transition Periods

Many WTO agreements recognize that it might be difficult for developing countries to implement all stated provisions at the same time as developed country members. Therefore, developing and least-developed country members are often given a longer transition period. For example, developing and least-developed countries were allowed to delay the application of the customs valuation agreement until January 2000. Similarly, the Trade Related Intellectual Property Rights (TRIPS) agreement was supposed to have been implemented by developing countries by January 2000; least-developed country members have until January 2006 to implement the agreement.

Exemptions from Specified Obligations

Two important exemptions for developing countries are those provided for in the Agreement on Subsidies and Countervailing Duties and the Agreement on Agriculture. The former prohibits developed countries from using export subsidies on industrial products (the so-called "red box"). Least-developed countries and developing countries with annual per capita incomes of $1,000 or less, however, are allowed to use export subsidies on industrial goods.

[2] Such an exemption does not apply if developing countries with individual shares in imports smaller than 3 percent collectively account for more than 7 percent.

The Agreement on Agriculture prohibits countries that did not make any export subsidy reduction commitments from using export subsidies on agricultural products. Even though the vast majority of developing countries did not make any such reduction commitments, they are allowed to grant two types of subsidies—subsidies to reduce the costs of marketing exports and subsidized internal transport charges on export shipments.

In addition, the agreement requires that trade-distorting domestic supports, as included in the Aggregate Measurement of Support (AMS), be reduced by 20 percent for developed countries, whereas the reduction for developing countries is only 13.3 percent. Moreover, developing countries are permitted to exclude certain subsidies (investment subsidies, input subsidies, and subsidies to encourage diversification from narcotics crops) in the calculation of the AMS.

Technical Assistance

A last element of S&D treatment is the provision of technical assistance from developed to developing countries, either on a bilateral or multilateral basis. Technical assistance provisions exist in

- The Decision on Notification Procedures,
- The Trade Policy Review Mechanism,
- The Understanding on Balance of Payments Provisions,
- The Decision on Measures Concerning the Possible Negative Effects of the Reform Program on Least-Developed and Net Food-Importing Developing Countries,
- The Agreement on the Application of Sanitary and Phytosanitary Measures,
- The Agreement on Technical Barriers to Trade,
- The Agreement on Customs Valuation,
- The Agreement on Pre-shipment Inspection,
- The General Agreement on Trade in Services, and
- The Agreement on Trade-Related Intellectual Property Rights.

Developing Country Concerns

Most developing countries have expressed great dissatisfaction with the fact that either developed countries have not implemented the numerous S&D provisions in the existing agreements or that these provisions have had no palpable effect on their participation in world trade or on their economic growth.

Indeed, the provisions that seek to improve access of developing country exports into developed country markets have had mixed success.

Though many developed countries have put a **Generalized System of Preferences** system in place, for example, the process remains unpredictable. The GSP often carries built-in restrictions, such as quotas, competitive-needs criteria (where preferential access is denied to specific imports that have become competitive in the importing market), higher level of development criteria (where a country is denied preferential access if it has moved to a higher stage of development), and other criteria, such as human rights abuses.

The **Lomé Convention**, which offered duty-free access to products of ACP countries into the EU market, except for rum, beef, bananas, and sugar (governed by separate protocols), was criticized by some as increasing developing country dependence on raw commodity exports. Its successor, **the Cotonou Agreement,** while maintaining those policies in the short-term, seeks to build reciprocal relationships between the EU and regional trade organizations in ACP countries (i.e., trade preferences will be accorded in both directions).

The **Everything But Arms** initiative tries to address the tariff escalation complaint (where higher tariffs are charged to products with higher levels of processing) by offering duty- and quota-free access to all goods, except arms, bananas, sugar, and rice (the latter three being phased in over time).

The **African Growth Opportunity Act,** which is still in its infancy, has had significant success in

selected countries (such as Madagascar, South Africa, Lesotho, Kenya, and Mauritius), but other countries are having trouble complying with U.S. textiles visa requirements. Others have complained of the difficulty in exporting agricultural goods to the United States and of assistance needed in finding U.S. buyers for African goods. U.S. policymakers, in conjunction with African businesspeople and officials, are convening to address these issues.

The other two broad S&D issues—according flexibility to developing countries in undertaking commitments and complying with agreements, and provision of technical assistance—are related. Developing countries have complained that they do not have the human resource, financial, or technological capacity to comply with many of the agreements, much less take advantage of the transition periods or other flexibility afforded by the agreements. They also complain that developed countries largely ignored provisions for technical assistance, since they were not obligatory.

Looking Ahead

Developing countries in the lead-up to the Seattle Ministerial in 1999 and now to the Doha Ministerial have been vocal about the need to make S&D provisions more meaningful, including by making them more enforceable.

One proposal recently submitted by a handful of developing countries suggested that a thorough review of the concept of S&D treatment be undertaken to create a "level playing field" in the multilateral trading system. It states that the guiding basis for such an undertaking is that

> liberalization of trade is not an end in itself but the means to an end, that is economic growth and development of all Members; and different levels of development achieved by members require different sets of policies to achieve economic growth and development.[3]

[3] Source: World Trade Organization, "Proposal for a Framework Agreement on Special and Differential Treatment," September 19, 2001

The proposal further recommends that a "framework agreement" on S&D be elaborated that, among other things, provides that S&D treatment be made mandatory and legally binding through the WTO dispute-settlement system and that transition periods be linked to objective economic and social criteria.

Furthermore, the WTO Committee on Trade and Development Chair, Ambassador Nathan Irumba of Uganda, submitted a report on October 3, 2001, providing an assessment of S&D, and suggesting a proposal for adoption by the WTO General Council. The goal, according to the proposal, is to ensure that individual S&D provisions are strengthened and made more precise, effective, and operational. Recommendations made in the proposal relate to three points:

- The legal and practical implications for developed and developing country members of converting S&D measures into mandatory provisions;
- Making S&D provisions more effective through improved information flows and capacity building; and
- How S&D can be incorporated into the architecture of WTO rules. If passed, text from the proposal could be incorporated into the draft ministerial declaration.

As developed and developing countries argue over the necessity to first deal thoroughly with "implementation issues"[4] arising from previous rounds of negotiations before the launch of a new round, some analysts consider that S&D could be the "make or break" issue to resolve the implementation impasse.

[4] See "Overview of Developing Country Concerns" in this series for a summary of the "implementation issues" and the views of developing countries.